

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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In the Matter of: Case No.
LIBERTY HOME CARE, 10-44799-ess
Debtor.

- - - - -x

In the Matter of: Case No.
CHRISTINE PERSAUD, 10-44815-ess
Debtor.

- - - - -x

KLEIN, Plaintiff, Adv. Case No.
v. 10-01228-ess
CHRISTINE PERSAUD, et al, Defendants

- - - - -x

United States Bankruptcy Court
271 Cadman Plaza East
Brooklyn, New York
May 20, 2011
10:39 AM

B E F O R E:
HON. ELIZABETH S. STONG
U.S. BANKRUPTCY JUDGE

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2 [1] Adjourned Pre-trial Conference re: Complaint. Adjourned
3 from: 10/19/10; 11/4/10; 12/14/10; 1/5/11; 2/2/11; 3/10/11;
4 4/7/11

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6 [4] Adjourned Motion to Dismiss/Withdraw Adversary Complaint,
7 In Addition to Motion for More Definite Statement, or in the
8 Alternative Motion to Strike Part of All of Adversary
9 Complaint. Adjourned from: 11/4/10; 12/14/10; 1/5/11; 2/2/11;
10 3/10/11; 4/7/11

11

12 Adjourned Discovery Conference (re: Related Document(s) [130]
13 Letter). Adjourned from: 4/27/11

14

15 [36] Adjourned Motion for 2004 Examination of Several
16 Individuals and Entities, Including the Debtor. Adjourned
17 from: 9/7/10; 10/19/10; 11/14/10; 12/14/10; 1/5/11; 2/2/11;
18 3/10/11; 4/7/11

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20 [1] Adjourned Pre-trial Conference re: Complaint. Adjourned
21 from: 10/19/10; 11/4/10; 12/14/10; 1/5/11; 2/2/11; 3/10/11;
22 4/7/11

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24 Adjourned Discovery Conference (re: Related Document(s) [28]
25 Letter). Adjourned from: 4/27/11

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[6] Adjourned Motion to Dismiss/Withdraw Adversary Complaint,
In Addition to Motion for More Definite Statement, or in the
Alternative Motion to Strike Part of All of Adversary
Complaint. Adjourned from: 11/4/10; 12/14/10; 1/5/11; 2/2/11;
3/10/11; 4/7/11

Adjourned Discovery Conference (re: Related Document(s) [165]
Letter). Adjourned from: 4/27/11

[30] Adjourned from Motion for 2004 Examination of Several
Individuals and Entities, Including the Debtor. Adjourned
from: 9/7/10; 10/19/10; 11/14/10; 12/14/10; 1/5/11; 2/2/11;
3/10/11; 4/7/11

Transcribed by: Devora Kessin

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A P P E A R A N C E S :

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BY: HANNA KLAPPER, ESQ.

1 P R O C E E D I N G S

2 THE CLERK: Numbers 55 through 63 on the calendar; all
3 matters regarding Liberty Home Care and Christine Persaud.

4 THE COURT: Good morning.

5 MR. FEINSTEIN: Good morning, Your Honor. Bruce
6 Feinstein for the debtor Liberty Home Care and Christine
7 Persaud.

8 MS. KLAPPER: Hanna Klapper, representing the IRS.

9 MR. ZILBERBERG: Good morning, Your Honor. Mendel
10 Zilberberg representing Creditor Klein.

11 THE COURT: All right.

12 Well thank you all. We're here on the pre-trial
13 conference motion in the adversary proceeding; discovery
14 conference -- which I'm thinking perhaps we can mark off. 2004
15 exam and parallel matters in the individual case.

16 Let's hear from debtor's counsel, please.

17 MR. FEINSTEIN: Yes, thank you Your Honor.

18 Your Honor, I note that we're appearing before you
19 approximately twenty minutes earlier than the stated time, and
20 I appreciate --

21 THE COURT: Was it an 11 o'clock call?

22 THE CLERK: No, that was the --

23 THE COURT: Please proceed.

24 MR. FEINSTEIN: Thank you. I want to mention to the
25 Court that I've spoken to all the parties that have been here

1 previously to ascertain which of those parties planned to be
2 here today and can tell the Court that as far as New York
3 State, Ms. Dwyer did not plan to appear today; the U.S.
4 Trustee's Office, Bill Curtin advised me that he would not
5 appear, nor would he be sending somebody else from the U.S.
6 Trustee's Office; and I spoke to the two Chapter 7 trustees who
7 have been appointed to the case, neither of whom said they plan
8 to appear today as well.

9 THE COURT: All right; let's proceed.

10 MR. FEINSTEIN: All right.

11 Since our last appearance, one of the issues that I
12 had mentioned in terms of new application, was that the debtor
13 had retained other counsel to succeed me. I've had a
14 conversation with counsel; we've had -- I prepared a consent to
15 change attorneys but haven't had time to execute it; I
16 understand he may be on his way here this morning; if not I
17 will take care of that.

18 THE COURT: Thank you.

19 MR. FEINSTEIN: Thank you, Your Honor.

20 And one thing that's happened since our last
21 appearance here is that the Appellate Court decision with
22 respect to the underlying Supreme Court case referencing Debtor
23 Klein, has come down. The Appellate Court did in fact reverse
24 the Supreme Court's confirmation of the arbitration award and
25 that has been sent back. I'm sure Mr. Zilberberg will have

1 something to say with respect to that.

2 THE COURT: Um-hum.

3 MR. FEINSTEIN: Both of the 341 hearings in terms of
4 status, were scheduled to be heard by the Chapter 7 trustees
5 this week, but the debtor, who is not here today, has been ill
6 all week; and so those matters have been rescheduled.

7 And finally, the Chapter 7 trustee for Liberty Home
8 Care filed late yesterday a letter of which appears to abandon
9 the Chapter 7 trustee's interest in Liberty Home Care. I had a
10 conversation with him on the phone yesterday, I wasn't sure
11 that was the direction he was taking and I have not had a
12 conversation with him subsequent to that letter being filed.
13 So I'm not sure where that's going; but there is apparently a
14 hearing scheduled -- or he scheduled a hearing -- on June 17th
15 on that particular matter.

16 That would be as far as status goes, Your Honor.

17 THE COURT: Okay; all right.

18 Mr. Zilberberg, let me hear from you.

19 MR. ZILBERBERG: I guess probably the most important
20 issue to advise the Court of, is the Appellate Court's ruling.
21 And what the Appellate Court -- or the Lower Court -- had
22 originally ruled -- being that there are two prongs to overturn
23 a default; one being a reasonable excuse and the other being
24 the meritorious defense -- the Lower Court had only reached the
25 reasonable excuse --

1 THE COURT: Um-hum.

2 MR. ZILBERBERG: -- which the Appellate Court
3 overturned. And we will be filing, among other things, with
4 the Appellate Court for reargument, within the next --
5 probably week to ten days.

6 The second point that was not reached --

7 THE COURT: What's the basis for reargument? As I
8 recall the decision, it was a reversal and a remand --

9 MR. ZILBERBERG: Right.

10 THE COURT: -- to reconsider that issue in State
11 Supreme.

12 MR. ZILBERBERG: I will -- no, Your Honor -- if I may
13 continue, I'll explain the basis; I want to go through both
14 prongs and then explain the basis for each.

15 THE COURT: Okay.

16 MR. ZILBERBERG: As it currently stands -- and the
17 second, the Lower Court had never reached the issue of
18 meritorious defense and our position was always that issue was
19 never in front of the Appellate Division. However, the
20 Appellate Division cited authority that they could reach out
21 and make a ruling in a meritorious defense.

22 If I could address the meritorious defense first, and
23 I say this with all deference to this Court that had clearly
24 earlier in this session, set forth its displeasure with
25 attorneys speaking ill or disparagingly of other attorneys.

1 The Appellate Division relied on an affidavit of an attorney in
2 reaching out, relating to the meritorious defense. I have that
3 attorney's deposition testimony, wherein not only did he recant
4 his totality of testimony, he sought to invoke the Fifth
5 Amendment regarding the totality of that affidavit. That
6 affidavit is not truthful; I have no other words to say. And
7 we were precluded from bringing it to the Appellate Division
8 because the Appellate -- the meritorious defense was not in
9 front of them; I could not seek to enlarge the record after
10 discovered evidence on an issue that was not rightfully before
11 them.

12 THE COURT: It strikes me that all these issues are
13 issues for the State Court.

14 MR. ZILBERBERG: But what they did --

15 THE COURT: That with respect to anything before me
16 today, it -- well, I have before me the decision from May 10th
17 and it speaks for itself. I don't think it affects anything I
18 would do today in the administration of the adversary
19 proceedings or these Chapter 7 bankruptcy cases. Now these
20 assets, whatever they are, being in the hands of trustees, it
21 seems to me that all there is -- and with new counsel
22 potentially for the debtor coming in -- anticipated coming
23 in -- I respect your disagreement with the decision; I'm
24 interested to know that instead of proceeding in State Supreme,
25 you're going to revisit the issues or seek to revisit them in

1 the Appellate Division. But it seems to me the only question
2 for me is really one of scheduling; when should we have the
3 parties back -- because we don't need to argue, therefore of
4 course no need to disparage -- a matter that's going to be
5 heard by a different court on papers that haven't been filed.

6 MR. ZILBERBERG: Your Honor --

7 THE COURT: I'm just trying to save you time.

8 MR. ZILBERBERG: I understand. I don't think that
9 procedurally there's anything in front of the Court.

10 THE COURT: Okay.

11 MR. ZILBERBERG: The only reason, if I may, just one
12 second, considering that my client has been accused of
13 potentially criminal activity -- of forging documents and
14 things of that sort -- I just wanted to bring out that the fact
15 that there's a decision in the Appellate Court, does not really
16 go to the issue of Creditor Klein in his personal capacity.

17 That having been said, I would also like to report to
18 the Court that Mr. Feinstein has graciously agreed to accept
19 service on behalf of the two employees of Liberty Home Care --
20 because we were having trouble serving them at their place of
21 business. And one other thing that Mr. Feinstein may have
22 failed to mention, is that when we spoke outside, he said that
23 in the event he does not have a substitution of attorney in the
24 next few days -- next few working days -- that he would be
25 filing a motion to withdraw in any case, in that we have -- if

1 I may say -- that the return date of that would be the same
2 return date he would seek as to the trustee's motion and we
3 will similarly -- if we can't confer and take care of things
4 with either Mr. Feinstein or new counsel -- maybe filing a
5 motion to compel in terms of discovery relate, and hopefully
6 we'll have the same return date; so there should be a lot of
7 things happening on that June 17th date.

8 THE COURT: Okay. And what time on the 17th is that?

9 MR. ZILBERBERG: He asked for 9:30 on the 17th.

10 THE COURT: Okay; Ms. Jackson, does that work? 9:30?

11 THE CLERK: I have 10 or 11.

12 THE COURT: I'm sorry? 10 or 11? We'll get
13 everything on for probably 10 or 11 instead but we'll
14 coordinate that. My court deputy will coordinate that so
15 there's no confusion.

16 I have something at noon so 11's not going to work for
17 me. Want to say 9?

18 THE CLERK: Okay, then.

19 THE COURT: We'll say 9 o'clock actually; put you
20 first thing.

21 Okay; Ms. Klapper? I'd like to hear from you;
22 anything you have to add?

23 MS. KLAPPER: Your Honor --

24 THE CLERK: Speak closer to the mic, please?

25 MS. KLAPPER: I entered the hearing today as a very

1 interested party of course, and I had been exploring with Mr.
2 Feinstein -- I don't know what will happen now -- ways for the
3 debtor to pay her tax debt; and we explored certain options and
4 I'm confident that if I can continue this, either with Mr.
5 Feinstein or a new attorney, that we may be able to reach some
6 kind of agreement.

7 THE COURT: All right.

8 MR. ZILBERBERG: Your Honor? I'm sorry.

9 THE COURT: I have to say I appreciate the ways --
10 there are difficult underlying issues here; difficult in the
11 law; challenging on the dynamics among the parties and I wanted
12 to note my appreciation for the way that the lawyers have
13 worked together, despite the fact that underneath, there's a
14 fairly contentious, rather difficult matter with a long
15 history; I appreciate that, it makes all of our jobs, which are
16 hard enough, that much easier.

17 Mr. Zilberberg, let me hear from you.

18 MR. ZILBERBERG: I just wanted to point out that from
19 the point of view of any creditor, we're in a little bit of a
20 state of limbo now because although -- and maybe amplifying
21 what Ms. Klapper's saying -- although it's in a Chapter 7,
22 rather than getting a cease and desist against her from the
23 trustee, he's looking to abandon; she's still running the
24 company, receivables are coming in. He's looking to abandon
25 the receivables, which is at this point in time, until the

1 17th, until that hearing and from, you know, things are kind of
2 in free-fall, for lack of a better term. And I think it's
3 something the Court should be aware of.

4 THE COURT: Well, I appreciate that the trustees -- we
5 have two fine and experienced trustee here, in Mr. O'Connell
6 and Mr. Pereira; they bring between the two of them decades,
7 decades of experience. They have a business judgment and if I
8 use your obligation under the supervision of the Office of the
9 United States Trustee, which is part of the United States
10 Department of Justice, so I have every reason to assume, as I
11 do in every professional performance, that they will discharge
12 their duties and obligation in good faith.

13 And we'll be back on June 17th on all these matters;
14 we'll see who here's for counsel.

15 I'm inclined to mark off the calendar -- intend to
16 mark off the calendar -- the discovery conferences because I
17 think we need to see how these matters shake out; we can always
18 put them back; we can always conference discovery issues in the
19 context of status.

20 So, all the other matters -- and I will spare the
21 record the recitation -- will be marked to that day and time,
22 June 17th at 9 o'clock; it's already in the calendar. And
23 discovery conferences will be marked off.

24 And interesting developments; we'll see. See you
25 then. Thank you so much.

1 MR. ZILBERBERG: Thank you, Your Honor.

2 THE COURT: I hope your clients are well.

3 MR. FEINSTEIN: Thank you, Your Honor.

4 MR. ZILBERBERG: Thank you, Your Honor.

5 (Whereupon these proceedings were concluded at 10:51 AM)

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I N D E X

RULINGS

	Page	Line
All discovery conference, marked off the	13	23
calendar		
Motions 1, 4, 6, 36 and 30 adjourned to June	13	22
17th		

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C E R T I F I C A T I O N

I, Devora Kessin, certify that the foregoing transcript is a
true and accurate record of the proceedings.

DEVORA KESSIN

AAERT Certified Electronic Transcriber CET**D 636

Veritext

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Date: December 16, 2011

United States Bankruptcy Court

Eastern District of New York
271 Cadman Plaza East, Suite 1595
Brooklyn, NY 11201-1800

IN RE:

CASE NO: 1-10-44815-ess

Christine Persaud

SSN/TAX ID:

CHAPTER: 7

xxx-xx-0247

DEBTOR(s)

NOTICE OF FILING OF TRANSCRIPT AND OF DEADLINES RELATED TO RESTRICTION AND REDACTION

Notice is hereby given that:

A transcript of the proceeding held on May 20, 2011 was filed on December 19, 2011 .

The following deadlines apply:

The parties have until December 27, 2011 to file with the court a Notice of Intent to Request Redaction of this transcript. The deadline for filing a Transcript Redaction Request is January 9, 2012.

If a Transcript Redaction Request is filed, the redacted transcript is due January 19, 2012.

If no such Notice is filed, the transcript may be made available for remote electronic access upon expiration of the restriction period, which is March 19, 2012 unless extended by court order.

To review the transcript for redaction purposes, you may purchase a copy from the transcriber Veritext Reporting Company (212-267-6868) or you may view the document at the public terminal at the Office of the Clerk.

Dated: December 22, 2011

For the Court, Robert A. Gavin, Jr., Clerk of Court

Notice Recipients

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Date Created: 12/22/2011

Case: 1-10-44815-ess

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